

(i) A description of how to assemble and adjust the locomotive so that it will operate according to design specifications in the certificate. See paragraph (e) of this section for requirements related to the parts you must use.

(ii) Instructions to remove the Engine Emission Control Information label and replace it with the certificate holder's new label. NOTE: In most cases, you must not remove the Locomotive Emission Control Information label.

(2) Provide to the certificate holder the information it identifies as necessary to comply with the requirements of this part. For example, the certificate holder may require you to provide the information specified by § 1033.735.

(e) For parts unrelated to emissions and emission-related parts not addressed by the certificate holder in the emission-related installation instructions, you may use parts from any source. For emission-related parts listed by the certificate holder in the emission-related installation instructions, you must either use the specified parts or parts certified under § 1033.645 for remanufacturing. If you believe that the certificate holder has included as emission-related parts, parts that are actually unrelated to emissions, you may ask us to exclude such parts from the emission-related installation instructions. NOTE: This paragraph (e) does not apply with respect to parts for maintenance other than remanufacturing; see § 1033.815 for provisions related to general maintenance.

(f) Failure to comply with this section is a violation of 40 CFR 1068.101(a)(1).

§ 1033.810 In-use testing program.

(a) *Applicability.* This section applies to all Class I freight railroads. It does not apply to other owner/operators.

(b) *Testing requirements.* Annually test a sample of locomotives in your fleet. For purposes of this section, your fleet includes both the locomotives that you own and the locomotives that you are leasing. Use the test procedures in subpart F of this part, unless we approve different procedures.

(1) Except for the cases described in paragraph (b)(2) of this section, test at

least 0.075 percent of the average number of locomotives in your fleet during the previous calendar year (i.e., determine the number to be tested by multiplying the number of locomotives in the fleet by 0.00075 and rounding up to the next whole number).

(2) We may allow you to test a smaller number of locomotives if we determine that the number of tests otherwise required by this section is not necessary.

(c) *Test locomotive selection.* Unless we specify a different option, select test locomotives as specified in paragraph (c)(1) of this section (Option 1). In no case may you exclude locomotives because of visible smoke, a history of durability problems, or other evidence of malmaintenance. You may test more locomotives than is required by this section.

(1) *Option 1.* To the extent possible, select locomotives from each manufacturer and remanufacturer, and from each tier level (e.g., Tier 0, Tier 1 and Tier 2) in proportion to their numbers in the your fleet. Exclude locomotives tested during the previous year. If possible, select locomotives that have been operated for at least 100 percent of their useful lives. Where there are multiple locomotives meeting the requirements of this paragraph (c)(1), randomly select the locomotives to be tested from among those locomotives. If the number of certified locomotives that have been operated for at least 100 percent of their useful lives is not large enough to fulfill the testing requirement, test locomotives still within their useful lives as follows:

(i) Test locomotives in your fleet that are nearest to the end of their useful lives. You may identify such locomotives as a range of values representing the fraction of the useful life already used up for the locomotives.

(ii) For example, you may determine that 20 percent of your fleet has been operated for at least 75 percent of their useful lives. In such a case, select locomotives for testing that have been operated for at least 75 percent of their useful lives.

(2) *Option 2.* If you hold a certificate for some of your locomotives, you may ask us to allow you to select up to two locomotives as specified in subpart E of

§ 1033.815

40 CFR Ch. I (7–1–08 Edition)

this part, and count those locomotives toward both your testing obligations of that subpart and this section.

(3) *Option 3.* You may ask us to allow you to test locomotives that use parts covered under §1033.645. If we do, it does not change the number of locomotives that you must test.

(4) *Option 4.* We may require that you test specific locomotives, including locomotives that do not meet the criteria specified in any of the options in this section. If we do, we will specify which locomotives to test by January 1 of the calendar year for which testing is required.

(d) *Reporting requirements.* Report all testing done in compliance with the provisions of this section to us within 45 calendar days after the end of each calendar year. At a minimum, include the following:

(1) Your full corporate name and address.

(2) For each locomotive tested, all the following:

(i) Corporate name of the manufacturer and last remanufacturer(s) of the locomotive (including both certificate holder and installer, where different), and the corporate name of the manufacturer or last remanufacturer(s) of the engine if different than that of the manufacturer/remanufacturer(s) of the locomotive.

(ii) Year (and month if known) of original manufacture of the locomotive and the engine, and the manufacturer's model designation of the locomotive and manufacturer's model designation of the engine, and the locomotive identification number.

(iii) Year (and month if known) that the engine last underwent remanufacture, the engine remanufacturer's designation that reflects (or most closely reflects) the engine after the last remanufacture, and the engine family identification.

(iv) The number of MW-hrs and miles (where available) the locomotive has been operated since its last remanufacture.

(v) The emission test results for all measured pollutants.

(e) You do not have to submit a report for any year in which you performed no emission testing under this section.

(f) You may ask us to allow you to submit equivalent emission data collected for other purposes instead of some or all of the test data required by this section. If we allow it in advance, you may report emission data collected using other testing or sampling procedures instead of some or all of the data specified by this section.

(g) Submit all reports to the Designated Compliance Officer.

(h) Failure to comply fully with this section is a violation of 40 CFR 1068.101(a)(2).

§ 1033.815 Maintenance, operation, and repair.

All persons who own, operate, or maintain locomotives are subject to this section, except where we specify that a requirement applies to the owner.

(a) Unless we allow otherwise, all owners of locomotives subject to the provisions of this part must ensure that all emission-related maintenance is performed on the locomotives, as specified in the maintenance instructions provided by the certifying manufacturer/remanufacturer in compliance with §1033.125 (or maintenance that is equivalent to the maintenance specified by the certifying manufacturer/remanufacturer in terms of maintaining emissions performance).

(b) Perform unscheduled maintenance in a timely manner. This includes malfunctions identified through the locomotive's emission control diagnostics system and malfunctions discovered in components of the diagnostics system itself. For most repairs, this paragraph (b) requires that the maintenance be performed no later than the locomotive's next periodic (92-day) inspection. See paragraph (e) of this section, for reductant replenishment requirements in a locomotive equipped with an SCR system.

(c) Use good engineering judgment when performing maintenance of locomotives subject to the provisions of this part. You must perform all maintenance and repair such that you have a reasonable technical basis for believing the locomotive will continue (after the maintenance or repair) to meet the applicable emission standards and FELs to which it was certified.